

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARTIN RUDDICK)	
Claimant)	
VS.)	
)	Docket Nos. 187,724 & 187,764
THE BOEING COMPANY)	
Respondent)	
AND)	
)	
AETNA CASUALTY & SURETY COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

This case is before the Appeals Board pursuant to a remand from the Kansas Supreme Court.

APPEARANCES

Claimant appeared by his attorney, Michael L. Snider of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Vaughn Burkholder of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Edward D. Heath, Jr., of Wichita, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the June 12, 1996, Award by the Administrative Law Judge.

ISSUES

The issue before the Appeals Board was whether claimant was entitled to continue to receive permanent partial disability benefits through June 12, 1996, the date of the Administrative Law Judge's review and modification order, rather than through March 18, 1996, the date he returned to work at Boeing. The Appeals Board entered an Order dated December 31, 1996, that applied K.A.R. 51-19-1. The Supreme Court reversed, finding that K.A.R. 51-19-1 is in direct conflict with K.S.A. 44-528(d) and is, therefore, void. The case was remanded for orders consistent with the Supreme Court's ruling "that the modification of Ruddick's award made on the basis that his work disability increased or diminished became effective as of the date 'that the increase or diminishment actually occurred,' or, in

this case, March 18, 1996, the date that Ruddick returned to work and earned a comparable wage at Boeing.” Ruddick v. Boeing Co., 263 Kan. 494, 500, 949 P.2d 1132 (1997).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As stated, the Supreme Court reversed and remanded for further orders consistent with the finding that claimant “was not entitled to compensation for the period of March 18, 1996, to July [sic] 12, 1996, the date of the ALJ’s order of modification.”¹ 263 Kan. at 500.

Consistent with the ruling by the Supreme Court, the Appeals Board finds the effective date of the review and modification of the agreed Award entered on July 12, 1995, should be March 18, 1996, the date claimant returned to work at a wage comparable to his pre-injury wage. Before the award was modified, respondent had been paying claimant permanent partial disability compensation benefits based upon a work disability of 38.5 percent. Claimant’s permanent partial disability compensation Award is reduced to a 14 percent general disability effective March 18, 1996. As the amount of this modified award had already been paid by the date claimant returned to work, respondent, therefore, has no further liability for permanent partial disability payments as long as claimant remains employed and is earning a wage comparable to the wage he was earning at the time of his injury.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by the Appeals Board on December 31, 1996, should be, and is hereby, modified to affirm the June 12, 1996, Award by Administrative Law Judge John D. Clark and deny claimant an award for additional permanent partial disability compensation.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Snider, Wichita, KS
Vaughn Burkholder, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹ The date of the ALJ’s Award on respondent’s application for review and modification was actually June 12, 1996.